

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

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| DAJUAN JONES, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case Number CIV-20-1311-C |
| |) | |
| JANET DOWLING, Warden |) | |
| |) | |
| Respondent. |) | |

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner filed the present action pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court convictions. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Amanda Maxfield Green. Judge Green entered a Report and Recommendation (“R&R”) on March 19, 2021, recommending the Petition be dismissed as untimely. Petitioner has timely objected.

The substantive facts and law are accurately set out in Judge Green’s R&R and there is no purpose to be served in repeating them yet again. As Judge Green noted, Petitioner’s claims are clearly time barred and he has failed to offer sufficient evidence to demonstrate otherwise. As Judge Green noted, the Supreme Court’s decision in Miller v. Alabama, 567 U.S. 460 (2012), established the rule on which Petitioner bases his request for relief. Petitioner disagrees, arguing it is the later case of Montgomery v. Louisiana, 577 U.S. 190 (2016), that is the operative case. Petitioner’s argument is unsupportable. As Judge Green noted, in Montgomery, the Supreme Court stated: “The Court now holds that

Miller announced a substantive rule of constitutional law.” Id. at. 212. Thus, Petitioner had one year following that decision to seek review, and because his Petition was not filed until much later, it is untimely. To the extent Petitioner argues that it was not clear that Miller established a new rule until Montgomery was decided, his argument is foreclosed by Dodd v. United States, 545 U.S. 353, 356-60 (2005). In his Objection, Petitioner argues that application of Dodd in this manner violates his equal protection rights. Petitioner’s argument on this issue would require this Court to overrule the Supreme Court. Of course, that is beyond the scope of the Court’s authority. The Court finds that Petitioner has failed to demonstrate that his Petition was timely filed.

Accordingly, the Court ADOPTS, in full, the Report and Recommendation of the Magistrate Judge (Dkt. No. 5). Petitioner’s claim is clearly time barred, and it will be DISMISSED with prejudice. A judgment will enter accordingly.

IT IS SO ORDERED this 20th day of April, 2021.


ROBIN J. CAUTHRON
United States District Judge